

1 A The eight games, in and of
2 themselves, I have always thought were -- was
3 a very flawed business proposition, because it
4 was such a short period of time and too few
5 games to merit the kind of price that everyone
6 is talking about.

7 Q Merit the kind of price that
8 Comcast was trying to pay to buy them,
9 correct, sir?

10 A To put on a 365-day-a-year sports
11 package, not to put on a network that just had
12 the eight games.

13 Q Excuse me, Mr. Burke, but the NFL
14 Network is a 365-day-a-year network, is it
15 not?

16 A In my opinion, having eight live
17 games and 358 days where the NFL Network plays
18 reruns and other kind of programming, to me it
19 is really not a fully distributed, fully well-
20 rounded sports network.

21 Q You are aware that the NFL Network
22 has won sports Emmys for that other

1 programming that is not live football games,

2 are you not, sir?

3 A Lots of people win Emmys.

4 Q Now, sir, in fact, you thought

5 there was probably no product more

6 transformative than that eight-game package,

7 is that correct, sir?

8 A I think it is fair to say that if

9 you are going to build a truly great sports --

10 cable sports channel, the NFL is -- has got to

11 be the foundation of that. It is the most

12 popular sport in the country. You can get NHL

13 or Major League Baseball or NASCAR. All of

14 those are valuable. But, really, the

15 foundation, you know, think like you're

16 building a multi-story building, the

17 foundation should be the NFL. They are the

18 most popular league in the country.

19 Q You have also stated before, Mr.

20 Burke, that sports is the must-have

21 programming on cable, correct?

22 A Yes.

1 Q Indeed, you gave an interview
2 recently where the -- with Sports Business
3 Journal.

4 A Yes, I did.

5 Q Just last week, correct? And at
6 one point you told the reporter that sports is
7 a must-have programming of cable. One way you
8 can head yourself is to get a little bit of it
9 yourself. It is actually a pretty good
10 business. We did it both offensively and
11 defensively. Do you remember that?

12 A Yes. I was primarily referring to
13 local sports, regional sports networks,
14 Comcast SportsNet. But I stand by the
15 statement. It is definitely -- sports is
16 definitely very important programming.

17 Q And when you say that you do it
18 defensively, that means that you do it because
19 you are trying to hold the costs of sports
20 programming down.

21 A Yes.

22 Q And when you do it offensively,

1 it's because you are trying to make money for
2 Comcast Corporation, correct?

3 A That's right.

4 Q One quick point, Mr. Burke. In
5 the discussions on the eight-game package with
6 the NFL executives, at one point you even
7 agreed to consider turning Versus into a
8 football-only channel, correct?

9 A I did not, no.

10 Q No. But Comcast did, sir, is that
11 correct?

12 A No. No, I don't think that's
13 true. I think we always thought the idea of
14 a football-only network was a bad idea. We
15 did, at the end, say that we would be open to
16 discussing it with the NFL if that was their
17 preference, but we always said we thought it
18 was very risky and would actually destroy
19 value for both the NFL and ourselves.

20 Q You don't think it is just because
21 it is a single sport network, that is not the
22 reason, is it? I mean, after all, golf is a

1 single sport network, is it not, sir?

2 A Golf is not a year-found -- the
3 NFL is not a year-round sport, and with eight
4 games we felt that you had to complement it
5 with other programming to make it successful.
6 I always thought it was a flawed idea.

7 MR. PHILLIPS: Your Honor, may I
8 approach?

9 JUDGE SIPPEL: Yes, you may.

10 BY MR. PHILLIPS:

11 Q I would like -- Mr. Burke, I would
12 like to show you what is already in evidence
13 as Enterprise Exhibit 90. Now, Mr. Burke,
14 this is a -- have you seen this document,
15 Exhibit 90, before?

16 A I have.

17 Q This is a Comcast proposal to the
18 NFL, correct?

19 A Yes.

20 Q This is a Comcast proposal in
21 connection with the eight-game package,
22 correct, sir?

1 A That is correct.

2 Q Dated November 2, 2005?

3 A Yes.

4 Q And, sir, could you turn to the
5 page numbered 7 at the bottom of this?

6 A Yes.

7 Q And could you -- the top of that
8 says, "Alternatively, Comcast is willing to
9 convert OLN." OLN, that is Versus, correct,
10 sir?

11 A That is correct.

12 Q "To a football network, and
13 believe this will also create significant
14 value."

15 A That's correct. But if you look
16 at --

17 Q Do you see that?

18 A I do. If you look at the bottom
19 of that --

20 Q And that is what you told the
21 NFL --

22 MR. CARROLL: He is cutting him

1 off, Your Honor.

2 JUDGE SIPPEL: Yes, I --

3 MR. PHILLIPS: I'm sorry.

4 JUDGE SIPPEL: Let's slow down a

5 little bit here.

6 MR. PHILLIPS: Let me --

7 JUDGE SIPPEL: Wait, wait. Hold

8 on just a second, Mr. Burke. You're on page

9 167 on the numbering, is that --

10 MR. PHILLIPS: No. Page 7 is page

11 170 on the Bates numbering.

12 JUDGE SIPPEL: 170 on the Bates?

13 Okay. Gotcha.

14 MR. CARROLL: Can he finish his

15 answer?

16 JUDGE SIPPEL: Now, yes, let's

17 start again. Let's see what you are trying to

18 get out of him. You were asking the witness,

19 and let's start again.

20 BY MR. PHILLIPS:

21 Q The question I asked you, Mr.

22 Burke, is, the statement -- let's read it

1 again, "Alternatively, Comcast is willing to
2 convert OLN to a football network and believe
3 this will also create significant value." Did
4 I read that correctly, sir?

5 A You did.

6 Q And that is what you told the NFL,
7 isn't --

8 A Let me -- if I may speak now.

9 This was the second part of the presentation
10 we made to the NFL. The first part of the
11 presentation to the NFL was to say we think
12 the games should go on Outdoor Life and be a
13 fully distributed, fully well-rounded network.

14 But if the NFL insists on doing a
15 football-only network, we are willing to talk
16 about that. And if you look at risks and
17 challenges underneath, it says we are worried
18 about the breadth and the attractiveness of
19 programming.

20 And then, the second bullet point,
21 "Football alone may not be enough to secure
22 full carriage, e.g. NBA TV and NFL."

1 So, basically, what we were saying
2 there is if you force us to only -- that the
3 only way that we can talk about getting games
4 is to convert the Outdoor Life to a football
5 network. We will have that discussion, but we
6 think it's a bad idea.

7 Q And --

8 A I personally thought it was a
9 terrible idea --

10 Q Mr. Burke?

11 A -- and said so.

12 Q Can you turn the page to the next
13 page, please, sir? Do you see the heading at
14 the top of the next page says, "Since this,"
15 and I take it "this" refers to the page
16 before, which is the offer -- the proposal to
17 make this a football-only network. "Since
18 this is fundamentally a programming
19 positioning decision, Comcast's proposal for
20 this scenario is the same as for the multi-
21 sport approach." Do you see that, sir?

22 A I do.

1 Q And right underneath that, sir, it
2 has a rights fee that is associated with the
3 approach for an all-football network, sir. Do
4 you see that?

5 A I do.

6 Q And in year 1, how much is that
7 rights fee?

8 A \$250 million.

9 Q And that is \$250 million that
10 Comcast is going to pay the NFL, correct?

11 A That's -- well, the entity would
12 pay the NFL.

13 Q Yes. That Versus would pay the
14 NFL, correct?

15 A Yes. Versus at that point would
16 be partially owned by the NFL.

17 Q Twenty-five percent owned,
18 correct?

19 A That is right.

20 JUDGE SIPPEL: This is pre-NFL
21 Network, is that right? That is --

22 MR. PHILLIPS: This is Comcast's

1 proposal, Your Honor, to acquire the eight
2 games rather than have the eight games go to
3 the NFL Network.

4 JUDGE SIPPEL: The network did
5 exist at that time.

6 MR. PHILLIPS: The network --

7 MR. CARROLL: Your Honor, I would
8 rather have the witness testify than --

9 MR. PHILLIPS: I think the -- the
10 Court is asking me, Mr. Carroll.

11 JUDGE SIPPEL: Well, I'm just -- I
12 was trying to get it clear in my mind what was
13 going on. But let the witness answer.

14 THE WITNESS: Yes, it did exist.

15 BY MR. PHILLIPS:

16 Q In fact, you perceived the network
17 as your competition for these games, correct,
18 sir?

19 A That's correct.

20 Q Year 2, how much, sir?

21 A It is hard to see, but I would say
22 it looks like 262, \$262 million.

1 Q And year 3?

2 A \$275 million.

3 Q Year 4?

4 A \$289-.

5 Q And year 5, sir?

6 A \$303-.

7 Q So for a total of how much that --
8 was Versus going to pay to the NFL?

9 A \$1.381 billion.

10 Q For that eight-game package.

11 A That's correct.

12 Q On a football network.

13 A Yes.

14 Q And, Mr. Burke, I would like to --
15 do you recall how much -- well, back up a
16 second. Comcast did some modeling, did it
17 not, of what it would charge other cable
18 distributors for Versus with the package of
19 the eight games, right?

20 A We did a lot of modeling, yes.

21 Q Yes, sir. And do you recall that
22 modeling?

1 A I recall some of that modeling,
2 yes.

3 Q Okay. Now, again, I am going to
4 go into some financial information here. This
5 is your information; it is not our
6 information.

7 MR. CARROLL: This is modeling
8 just for proposed pricing of this.

9 THE WITNESS: Yes, I would prefer
10 people not be in the room if we are talking
11 about proposed pricing and other cable
12 companies.

13 MR. CARROLL: Okay. All right.
14 So that is going to be highly confidential.

15 JUDGE SIPPEL: All right. If
16 there's anybody in the courtroom that
17 shouldn't be, please leave.

18 Thank you.

19 We're going to need to take a
20 break. We'll take, you know, 10 minutes, give
21 or take a little.

22 (Whereupon, the proceedings in the

1 foregoing matter went off the
2 record at 5:33 p.m. and went back
3 on the record at 5:49 p.m.)
4 JUDGE SIPPEL: We're back on the
5 record.

6 Your witness, sir. Cross
7 examination.

8 MR. PHILLIPS: Your Honor, thank
9 you, sir.

10 CROSS EXAMINATION

11 BY MR. PHILLIPS:

12 Q Going back one second, Mr. Burke,
13 you said that Mr. bond wasn't in the room
14 alone when he negotiated the 2004 agreement
15 and affiliation.

16 A Oh, I don't think I said that.

17 Q Oh, okay. Maybe I misunderstood.
18 I thought you said but the reason that Mr.
19 Bond could negotiate for negotiation rights
20 that helped the program assignment because you
21 were there.

22 A Yes, in the meeting with Mr.

1 Bornstein when we discussed the sport tier and
2 came up with the idea.

3 Q Right, but you weren't there in
4 any of the negotiations of the contract
5 itself, were you, sir?

6 A No, no. Matt did all of the paper
7 work.

8 Q Including being one negotiating
9 the tiering rights?

10 A But it was pretty clear what the
11 tiering rights were going to be based on the
12 need.

13 Q How long did that negotiation go,
14 sir?

15 A The meeting was probably an hour,
16 and we probably talked about the sports
17 tiering rights for five minutes.

18 Q Not the meeting, sir, but I'm
19 talking about the negotiation of the
20 affiliation agreement. What period of time
21 did that take, sir?

22 A I don't recall months. It was a -

1 -

2 Q Nearly a year?

3 A -- long negotiation, yes.

4 Q And you're talking about one
5 meeting at which you were present, right, sir?

6 A I was on the phone maybe four or
7 five times with Steve, but one meeting where
8 we all sat and had that discussion. That's
9 right.

10 Q Now, when you were -- to just go
11 back for a second, I apologize, Your Honor,
12 but just to get back to where we were --

13 JUDGE SIPPEL: Go right ahead.

14 MR. PHILLIPS: -- before the
15 break.

16 JUDGE SIPPEL: Go right ahead.

17 BY MR. PHILLIPS:

18 Q And I'd ask you, Mr. Burke, when
19 you were looking at acquiring a package for
20 billions of dollars, I asked you if you
21 modeled how much versus the charge of the
22 distributors and you said yes.

1 A Yes.

2 Q Do you recall that?

3 A Yes.

4 Q And I'd like to show you a
5 document that's already been marked and, I
6 believe, admitted through to evidence. It's
7 Exhibit 160.

8 MR. PHILLIPS: May I approach,
9 Your Honor?

10 JUDGE SIPPEL: Please, certainly.
11 Well, I was going to say I should have it.

12 MR. PHILLIPS: Your Honor, my
13 apologies.

14 JUDGE SIPPEL: I would have asked,
15 but I'm supposed to have one.

16 MR. PHILLIPS: I think you do, but
17 I'm more than happy to give you another one.

18 JUDGE SIPPEL: I know, but I don't
19 feel good when I can't find it.

20 MR. PHILLIPS: Well, we --

21 JUDGE SIPPEL: Go ahead, go ahead,
22 go ahead.

1 MR. PHILLIPS: We have several
2 copies, Your Honor.

3 JUDGE SIPPEL: Thank you.

4 BY MR. PHILLIPS:

5 Q Mr. Burke, this document is
6 entitled "Time Warner 2006 Plan with NFL on
7 OLN," correct?

8 A Yes.

9 Q And OLN is Versus, correct? I
10 think you --

11 A That's correct.

12 Q And this document, it sets forth
13 an analysis of the rate card that you intend
14 to charge Time Warner if you get the NFL
15 games, correct?

16 A If we get the NFL games and other
17 sports programming.

18 Q All right. Now, it refers to an
19 NFL surcharge. Do you see that in the second
20 bullet under OLN?

21 A It does.

22 Q And it would be effective January

1 1st, '07, through December 31st, 2011,

2 correct?

3 A That's correct.

4 Q And then the next bullet says

5 "rate," and then it has a box which looks like

6 a rate card, sir.

7 A Yes.

8 Q Now, again, this document doesn't

9 say anything about any other sports now, does
10 it, sir?

11 A Well, the product was going to be
12 on outdoor life. So it was pretty obvious
13 there would be other sports involved.

14 Q Sir, it talks about an NFL
15 surcharge. Is that what it says, sir?

16 A It does.

17 Q And, in fact, isn't this is the
18 surcharge that you plan to go to Time Warner
19 with if you got the games, correct, sir?

20 A I think it is certainly fair to
21 say that the getting the games was the
22 precipitating events for going to Time Warner

1 and getting the surcharge.

2 Q And if you look at the last time
3 in this document, you see on the second page
4 it says "Disaster Plan"?

5 A Yes.

6 Q And the disaster plan is if TWC --
7 that's Time Warner table, right?

8 A Yes.

9 Q -- declines the NFL surcharge. Do
10 you see that?

11 A Yes.

12 Q And if that happens, you wanted to
13 use heavy, Item 6 there, heavy NFL gorilla
14 marketing plan. Do you see that, sir?

15 A Yes.

16 Q Gorilla marketing plan, that's
17 where you go out and use consumers to try to
18 pressure cable companies to take --

19 A Yes.

20 Q -- networks, correct, sir?

21 A Yes.

22 Q And kind of like the advertising

1 you were talking about the NFL did with Time
2 Warner and later with Comcast, sir, correct?

3 A Yes.

4 Q And you plan to do that if Time
5 Warner didn't accept this surcharge that you
6 were going to impose that you call here the
7 NFL surcharge, correct, sir?

8 A I think someone in our programming
9 group, that was their idea to do that.

10 Q The programming group that was in
11 charge of pricing the Versus with the NFL
12 games, correct?

13 A Yes.

14 Q Now, I'd like to show you one
15 other document here.

16 A Can I just make one additional
17 comment on this document?

18 Q Mr. Carroll, I sure, can ask you
19 many questions.

20 A Okay. That's fine.

21 MR. PHILLIPS: If I could approach
22 again, Your Honor, I'd actually like to show

1 Mr. Burke what's been pre-marked for
2 identification as NFL Exhibits 97 and 97(a),
3 as I understand.

4 JUDGE SIPPEL: Okay. I don't --

5 MR. PHILLIPS: This time I'm going
6 to make sure you --

7 JUDGE SIPPEL: I think I need one
8 this time.

9 MR. PHILLIPS: -- the first time.

10 JUDGE SIPPEL: Go ahead. We've
11 got to figure out what you're doing here yes.
12 I've got this one document. Is that all I'm
13 supposed to have?

14 MR. PHILLIPS: It is. It has been
15 stapled together, Your Honor.

16 JUDGE SIPPEL: Okay. I hear you.

17 MR. PHILLIPS: The first document,
18 as you see, is an E-mail dated December 16th,
19 2005, from Kenneth Doty to a list of people,
20 and then the remainder of the document is a
21 spreadsheet, the first page of which says "OLN
22 with NFL Summary."

1 MR. CARROLL: Your Honor, you may
2 remember during the exhibit session on Monday
3 this was the exhibit that it was decided
4 didn't go together, and that's why it's
5 supposed to be 97 and 97(a).

6 JUDGE SIPPEL: Yes.

7 MR. CARROLL: We object to being
8 presented as one as if they did go together.

9 JUDGE SIPPEL: That's fair, 97 and
10 then 97(a) for that reason.

11 MR. PHILLIPS: Your Honor, just to
12 clarify, I think it's a matter in dispute. It
13 wasn't decided that they don't go together.
14 In fact, we believe they do, in fact, go
15 together.

16 JUDGE SIPPEL: But it didn't get
17 established.

18 MR. PHILLIPS: I'm going to try to
19 push that a little bit, Your Honor. Thank
20 you.

21 JUDGE SIPPEL: All right. But
22 right now we're -- okay. Right now the record

1 stands as Mr. Carroll has stated. We have 97

2 and we have 97(a), and you may proceed.

3 MR. PHILLIPS: Yes, thank you,

4 Your Honor.

5 BY MR. PHILLIPS:

6 Q Who is Mr. Doty, Kenneth Doty?

7 A I'm not sure.

8 Q And who's Russ Chandler?

9 A Russ Chandler is a financial
10 analyst in our programming group.

11 Q And do you know what Mr. Chandler
12 is in charge of doing?

13 A He does business plan analysis.

14 Q Including planning that
15 contributes to the pricing of programming in
16 the programming group?

17 A Not so much pricing. It would be
18 more new businesses or rights acquisition. He
19 does a lot with the regional sports networks,
20 but I would not say he's heavily involved in
21 pricing.

22 Q But the programming group is in

1 charge of setting the pricing for programming

2 that's going to be shown.

3 A That's correct.

4 Q That Comcast owns, correct?

5 A That's correct.

6 Q Now, if I may point you down to
7 the E-mail that's from Mr. Chandler, dated
8 Friday, February 16th, 2005, and Mr. Chandler
9 writes in the third paragraph, is that the
10 biggest question is "how much of the increase
11 in affiliate revenue can we attribute to the
12 NFL rights." Do you see that?

13 A I do.

14 Q And if you go on down a couple
15 more paragraphs, in which he's discussing
16 this, he then at the last line of the fifth
17 paragraph there, the last sentence starts
18 three or four lines up from the bottom. It
19 says, "The TW" -- that's Time Warner, correct?

20 A Yes.

21 Q Do you see where I'm reading from?

22 A Yes.